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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 1254

RUBY MAYFIELD, ADMINISTRATRIX OF THE ESTATE OF REUBEN THOMAS, DECEASED,

Petitioner,

vs.

KANSAS CITY LIFE INSURANCE COMPANY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

TOM LEEMING,
OWEN RALL,
RICHARD V. HENRY, JR.,
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Summary of Brief.

Statement.

The petitioner brought the present action under five anuity contracts issued by respondent. Respondent interposed no affirmative defenses to petitioner's complaint. At the close of petitioner's evidence, respondent moved for a directed verdict which was granted by the District Court. This action was affirmed by the Circuit Court of Appeals. Petitioner is seeking a further review of her evidence by this Court on the grounds that she has been deprived of her right to trial by jury and that the concurrent decisions of the courts below are contrary to public policy and the proper administration of justice 1

Argument.

I The petitioner's constitutional right to a trial by jury has not been infringed as the evidence which she introduced was insufficient to support a verdict in her favor and could lead to but one reasonable conclusion. This being the case, the District Court was required to direct a verdict in favor of the respondent, and the Circuit Court of Appeals properly so held. This result is not changed by Rule 50 (b) of the Federal Rules of Civil Procedure... 3

II. Neither public policy nor the proper administration of justice requires a further review of petitioner's evidence by this Court where both the District Court and Circuit Court of Appeals have reached the same result. The concurrent rulings of these lower courts evaluating petitioner's evidence are given great weight by this Court, and petitioner has shown nothing in her petition which forms a basis for disturbing them 5

List of Authorities Cited.

Cases.

Allen v. Pennsylvania Railroad Company, (C. C. A. 7) 120 F. (2d) 63 (1941) 3

Brady v. Southern Railway Company, 320 U. S. 476 (1943) 3

Galloway v. United States of America, 319 U. S. 372 (1943) 3, 4, 5

Gunning v. Cooley, 281 U. S. 90 (1930) 3

Montgomery Ward & Company v. Duncan, 311 U. S. 243 (1940) 4

Patton v. Texas & Pacific Railway Company, 179 U. S. 658 (1901) 5

Pennsylvania Railroad Company v. Chamberlain, 288 U. S. 333 (1933) 4

Reese v. Philadelphia & Reading Railway Company, 239 U. S. 463 (1915) 5

Tennant v. Peoria & Pekin Union Railway Company, 321 U. S. 29 (1944) 4

Tiller v. Atlantic Coast Line Railroad Company, 318 U. S. 54 (1943) 4

Worcester v. Pure Torpedo Company, (C. C. A. 7) 140 F. (2d) 358 (1944) 3

Miscellaneous.

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KANSAS CITY LIFE INSURANCE COMPANY,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

STATEMENT.

May it please the Court:

The present action involves five annuity contracts which respondent issued to one Reuben Thomas. Upon being furnished with due proof of his death in 1940, respondent paid out the proceeds due under each of the contracts to the beneficiaries named therein. Petitioner thereafter instituted the present action in which she asserted the payment to have been wrongful with respect to the four contracts in which Reuben Thomas' cousin, Charles Lester Thomas, was named beneficiary. Petitioner did not con-

test the payment under the fifth contract in which she was named a beneficiary and received the proceeds provided for by the contract.

In her complaint petitioner predicated her right to recover on three alternative theories (Rec. 40-44). In its answer (Rec. 45-46), respondent admitted several of the allegations and denied the remaining ones. The matter came on for trial before the District Court on these pleadings. It is to be noted that respondent raised no affirmative defenses and that therefore the burden of proof was upon the petitioner to prove the various facts upon which she relied for her alleged cause of action. At the close of petitioner's evidence, respondent moved for a directed verdict which was granted and judgment entered thereon.

Petitioner appealed from this ruling to the Circuit Court of Appeals for the Seventh Circuit, asserting that she presented sufficient evidence to enable the jury to find in her favor under either her trust or conspiracy theories. After reviewing the record, the Circuit Court of Appeals affirmed the action of the District Court in holding petitioner's evidence to be insufficient (158 F. (2d) 331; Rec. 357-364).

In her petition to induce this Court to assume jurisdiction of the matter, petitioner in substance states no more than that she is dissatisfied with the concurrent rulings made by the District Court and Circuit Court of Appeals with respect to her evidence and requests an examination *de novo* of the same by this Court. As a matter of form, she now asserts that these concurrent rulings deprived her of her right to trial by jury and that a result adverse to her is contrary to public policy and a proper administration of justice.

ARGUMENT.

I.

The Petitioner's Constitutional Right to a Trial by Jury Has Not Been Infringed.

We believe it to be a correct statement of the law that upon a defendant's motion for a directed verdict at the close of a plaintiff's evidence, the plaintiff is entitled to have credence given to all proper evidence offered by her and to the benefit of all inferences reasonably drawn therefrom.

Galloway v. *United States of America,* 319 U. S. 372 (1943).

Gunning v. *Cooley,* 281 U. S. 90 (1930).

Worcester v. *Pure Torpedo Company,* (C. C. A. 7) 140 F. (2d) 358 (1944).

Allen v. *Pennsylvania Railroad Company,* (C. C. A. 7) 120 F. (2d) 63 (1941).

If, however, plaintiff's evidence, in the light of this standard, is insufficient to support a verdict in her favor or could lead to but one reasonable conclusion as to the verdict, the trial court is required to direct a verdict in favor of the defendant, and such action does not deprive the plaintiff of her right to trial by jury. This Court stated the rule thus in *Brady* v. *Southern Railway Company,* 320 U. S. 476 (1943) at pages 479-480:

> "When the evidence is such that without weighing the credibility of the witnesses there can be but one reasonable conclusion as to the verdict, the court should determine the proceeding by non-suit directed verdict or otherwise in accordance with the applicable practice without submission to the jury, or by judgment notwithstanding the verdict."

See also:

Galloway v. *United States of America*, 319 U. S. 372 (1943).

Pennsylvania Railroad Company v. *Chamberlain*, 288 U. S. 333 (1933).

Patton v. *Texas & Pacific Railway Company*, 179 U. S. 658 (1901).

Such, we submit, was the ruling of the District Court judge in this case, after an evaluation of the evidence offered by the petitioner. Such was also the ruling of the Circuit Court of Appeals after a similar evaluation of petitioner's evidence. Admittedly the trial court judge should not go further and weigh the credibility of witnesses or conflicting evidence. These latter factors were the questions this Court had before it in *Tennant* v. *Peoria & Pekin Union Railway Company*, 321 U. S. 29 (1944) and *Tiller* v. *Atlantic Coast Line Railroad Company*, 318 U. S. 54 (1943) cited by petitioner.

Nor, we submit, has this result been changed by Rule 50 (b) of the Federal Rules of Civil Procedure. This Court stated in *Montgomery Ward & Company* v. *Duncan*, 311 U. S. 243 (1940) at page 250:

> "Rule 50 (b) merely renders unnecessary a request for reservation of the question of law or a formal reservation and, in addition, regulates the time and manner of moving for direction and of moving for judgment on the basis of the refusal to direct. It adds nothing of substance to rights of litigants heretofore existing and available through a more cumbersome procedure."

See also:

Galloway v. *United States of America*, 319 U. S. 372 (1943).

II.

Neither Public Policy Nor the Proper Administration of Justice Requires a Further Review of the Evidence in This Cause where Both the District Court and the Circuit Court of Appeals Have Reached the Same Result.

Petitioner of course does not agree with the evaluation that the District and Circuit Courts have made of her evidence. As a basis for this Court's assumption of jurisdiction, petitioner alludes to this disagreement and asserts it to be contrary to public policy and a proper administration of justice. She cites no authority for this novel proposition which we believe could be stated as the sentiment of every unsuccessful litigant.

With respect to the question as to whether this concurrent evaluation of the evidence by the District Court and Circuit Court of Appeals should be subject to further review, this Court has long held that such concurrent opinions should be given great weight. In *Patton* v. *Texas & Pacific Railway Company*, 179 U. S. 658 (1901), this Court had before it the question of the propriety of a District Court judge's action in directing a verdict for a defendant. This action had been affirmed by the Circuit Court of Appeals. After discussing the right to trial by jury and the full responsibility of the trial judge for the outcome of the trial, this Court stated at page 660:

> "He (the trial judge) has the same opportunity that jurors have for seeing the witnesses, for noting all those matters in a trial not capable of record, and when in his deliberate opinion there is no excuse for a verdict save in favor of one party, and he so rules by instructions to that effect, an appellate court will pay large respect to his judgment. And if such judgment is approved by the proper appellate court, this Court, when

> called upon to review the proceedings of both courts, will rightfully be influenced by their concurrent opinions."

This same result was reached in *Galloway* v. *United States of America*, 319 U. S. 372 (1943) and *Reese* v. *Philadelphia & Reading Railway Company*, 239 U. S. 463 (1915).

Petitioner in her petition and supporting brief has detailed to this Court the same evidence and arguments with respect thereto that she presented to the District Court and Circuit Court of Appeals below. We submit that she has shown nothing which would lead this Court to a different conclusion than that arrived at by both of these courts.

Conclusion.

WHEREFORE, respondent prays that the Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit be denied.

KANSAS CITY LIFE INSURANCE COMPANY,
Respondent,

By TOM LEEMING,
OWEN RALL,
RICHARD V. HENRY, JR.,
Its Attorneys.

Chicago, Illinois,
May 6, 1947.